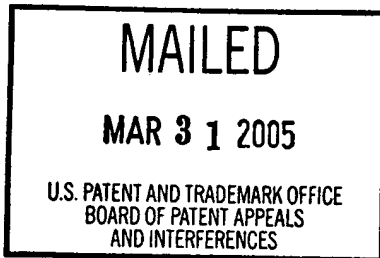


The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 26

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES



Ex parte JAN ERIKSSON

Appeal No. 2005-0710
Application 09/581,911

ON BRIEF

Before FRANKFORT, McQUADE, and BAHR, Administrative Patent Judges.

FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 10, all of the claims pending in this application.

As noted on page 1 of the specification, appellant's invention relates to an animal related apparatus, comprising a robot for performing an animal related operation, said robot being associated with a control means, and at least one animal related device associated with said control means, said robot being provided with a robot arm adapted to move the animal related device towards an animal. As disclosed, the animal related device may be a teatcup for milking, or a teat cleaning means, used on an animal at least temporarily constrained in an animal space (4) as shown in Figure 1 of the application. An objective of appellant's invention is to provide an improved apparatus like that noted above requiring less maintenance. To that end, appellant's apparatus includes a registering means for registering a cumulative running value, such as the cumulative running time for each of the individual components of the entire animal related apparatus, and a control means adapted to generate a signal when a predetermined threshold value (e.g., maximum running time for a given component or for the entire apparatus) has been reached, so that service or maintenance can be timely performed for the given component or for the entire apparatus.

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Independent claim 1 is representative of the subject matter on appeal and a copy of that claim can be found in the Appendix to appellant's brief.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Jakobson et al. (Jakobson)	4,508,058	Apr. 2, 1985
Finger	0 244 642	Nov. 11, 1987
(European patent application)		
Innings et al. (Innings)	WO 96/36212	Nov. 21, 1996

Claims 1 through 4 and 8 through 10 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Jakobson in view of Finger.

Claims 5 through 7 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Jakobson in view of Finger as applied above, and further in view of Innings.

Rather than reiterate the examiner's full statement of the above-noted rejections and the conflicting viewpoints advanced by the examiner and appellant regarding those rejections, we make reference to the final rejection (Paper No. 15, mailed February

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13, 2003) and substitute examiner's answer (Paper No. 24, mailed May 25, 2004) for the reasoning in support of the rejection, and to appellant's brief (Paper No. 17, filed August 12, 2003) and reply brief (Paper No. 20, filed December 8, 2003) for the arguments thereagainst. Appellant did not file a reply to the substitute examiner's answer mailed May 25, 2004.

OPINION

In reaching our decision in this appeal, we have given careful consideration to appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by appellant and the examiner. As a consequence of our review, we have made the determination that the examiner's final rejection of claims 1 through 10 under 35 U.S.C. § 103(a) will not be sustained. Our reasons follow.

In rejecting claims 1 through 4 and 8 through 10 under 35 U.S.C. § 103(a), the examiner has made certain findings with regard to the disclosures and teachings of Jakobson and Finger. More particularly, the examiner has indicated on page 2 of the final rejection that Jakobson discloses:

an animal related apparatus with a robot (Jakobson et al #8) for performing an animal relates operation, the robot being associated with a control means (Jakobson et al #5), at least one animal related device (#6) associated with the control means, the robot being provided with a robot arm (Jakobson et al #15) adapted to move the animal related device towards the animal, teat location device, teat cleaning device (Jakobson et al Fig. 6 #18), gate means (Jakobson et al #4). A registering means (Jakobson et al #14 and #18), a control means adapted to generate a signal (Jakobson et al Col. 6 line 27-28) when a predetermined threshold value has been reached.

In the examiner's view, the only thing lacking in Jakobson is any teaching or disclosure regarding a predetermined threshold value and a running value for each of the animal related device, the robot, and the complete related operation, as set forth in claim 1 on appeal. To address these deficiencies in Jakobson the examiner turns to Fingers, urging that this reference teaches that it is old and well known in the art of mechanical maintenance practices to monitor the total operating time of a machine or apparatus and to use that information to provide a basis for determining when the machine or apparatus should receive maintenance.

From the above-noted teachings of the applied prior art, the examiner has concluded that it would have been obvious to one of ordinary skill in the art at the time of appellant's invention

to modify the apparatus teachings of Jakobson et al with the maintenance practices of Finger since preventative maintenance procedures are well-known means of preventing unnecessary operational down time do [sic, due] to mechanical failures and to keep the system clean . . . (Finger col. 1) thus assuring reliability of a system.

In the brief (pages 4-6), appellant focuses on the examiner's findings with regard to Jakobson, contending that Jakobson does not disclose the recited "registering means . . . for registering a cumulative value" or the recited "control means . . . to generate a signal when a predetermined threshold value has been reached," as set forth claim 1 on appeal. More particularly, appellant points out that the examiner's finding that elements (14) and (18) of Jakobson are "registering means" like those of claim 1 on appeal, is in error, since those elements in Jakobson (col. 6, lines 10-40) are merely described as first and second proximity sensors utilized to, respectively, laterally and longitudinally position and vertically position the milking means (17) therein for attachment to the animal's teats, and have no disclosed capability of or need for registering a

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cumulative running value. Regarding the "control means" of claim 1, appellant takes issue with the examiner's position in the final rejection that Jakobson (col. 6, lines 27-28) discloses a control means adapted to generate a signal when a predetermined threshold value has been reached, since the computer (5) mentioned in that portion of Jakobson is merely said to emit a signal that a cow positioned in the stall is to be milked, and is not described as providing a signal "when a predetermined threshold value has been reached," as required in claim 1 on appeal.

Having reviewed and evaluated the prior art relied upon by the examiner in the final rejection of independent claim 1, we find that we are in agreement with appellant that the examiner's above-noted findings concerning the teachings of Jakobson are in error. Moreover, we also note that we are at somewhat of a loss to understand exactly what the examiner's position is intended to be when "the apparatus teachings of Jakobson et al" are modified "with the maintenance practices of Finger," as contended in the final rejection and substitute answer. Is it the examiner's

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intention to modify the proximity/position sensors (14, 18) pointed to in Jakobson or some other structure of that milking apparatus, and in exactly what manner based on the asserted "maintenance practices" of Finger?

In light of the foregoing, it is our determination that the examiner has not made out a *prima facie* case of obviousness with regard to the animal related apparatus set forth in appellant's claim 1 on appeal. Thus, the examiner's stated rejection of independent claim 1, and of claims 2 through 4 and 8 through 10 which depend therefrom, under 35 U.S.C. § 103(a) will not be sustained.

Regarding the examiner's rejection of claims 5 through 7 under 35 U.S.C. § 103(a) as being unpatentable over Jakobson in view of Finger as applied to claim 1 above, and further in view of Innings, we have reviewed the Innings reference, but find nothing therein which overcomes or provides for the deficiencies we have identified above with regard to the basic combination of Jakobson and Finger. Nor do we find anything in the examiner's final rejection that addresses the particular limitations in claims 5 through 7 on appeal regarding "said control means . . .

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adapted to register the cumulative running value of said pulsator" (claim 5), or wherein the running value is either "running time of said pulsator" (claim 6) or "a number of pulsations generated by said pulsator" (claim 7). Accordingly, the examiner's rejection of dependent claims 5 through 7 under 35 U.S.C. § 103(a) will likewise not be sustained.

As for the examiner's assertions in the "Response to Argument" section of the original and substitute answers (Paper Nos. 18 and 24), we share appellant's view as set forth in the rely brief (Paper No. 20) that the examiner is attempting to substitute a newly formulated position and an impermissible new ground of rejection in the answer. We indicated as much in the Remand mailed March 9, 2004 (Paper No. 21), but the examiner chose not to address that issue in the substitute answer of May 25, 2004. Since it is clear to us that the position as expressed in the "Response to Argument" section of the original and substitute answers differ significantly from that articulated in the rejections set forth on pages 4-5 of the substitute answer, we have not considered that position in this appeal.

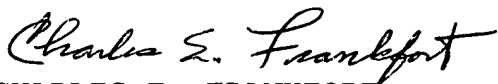
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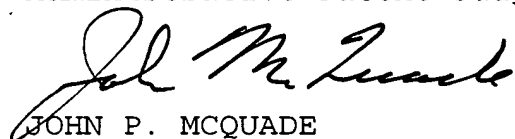
However, we remand the present application to the examiner for a full consideration of the teachings and suggestions to be fairly derived from Jakobson, Finger and Innings, and to consider making formal rejections of the claims now on appeal under 35 U.S.C. § 103(a). By re-opening the prosecution and making such a new set of rejections, appellant will be afforded due process and thus have a full and fair opportunity to adequately respond to the examiner's new position by way of amendment or argument. In any rejections under 35 U.S.C. § 103(a), the examiner should state the ground of rejection and point out where each of the specific limitations recited in the rejected claims is found in the prior art relied upon; identify any differences between the rejected claims and the prior art relied upon; and then explain how and why the claimed subject matter is rendered unpatentable over that prior art.

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In light of the foregoing, the decision of the examiner to reject claims 1 through 10 of the present application under 35 U.S.C. § 103(a) is reversed.

REVERSED AND REMANDED


CHARLES E. FRANKFORT)
Administrative Patent Judge)


JOHN P. MCQUADE)
Administrative Patent Judge)


JENNIFER D. BAHR)
Administrative Patent Judge)

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Young & Thompson
745 South 23rd Street 2nd Floor
Arlington, VA 22202